COURT NO.6

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.7022 OF 2001

CIVIL SIDE

Smt. Sabira Banu & others ……..REVISIONIST

Versus

Sri Mohan Singh and another …….RESPONDENTS

Hon'ble Rajesh Tandon J.

The present writ petition under Article 226 of Constitution of India has been filed by the petitioner challenging order dated 21.9.2001 by which application filed by the respondent no. 1 substituting the heirs of Narain Singh has been allowed.

The brief facts giving rise to the present writ petition are that an application under section 21 (I)(a) was filed on 20.8.1993 by Sri Narain Singh praying for release of accommodation i.e. shop no.2 Mohan Niwas Malli Bazar, Bhawali, District Nainital in his favour. In para 4 of his application Sri Narain Singh has described family members of his family as under:

(1) Applicant self (2) Smt. Narain Singh (wife) (3) Mohan Singh (son) (4)Smt. Mohan Singh (daughter in law) (5) Master Kirti Bardhan (grad son) (6) Gaurav Bardhan (grand son) (7)Yas Bardhan(grand son) (8)Diwan Singh (brother) (9)Pratap Singh (nephew) (10) Smt. Pratap Singh (wife of the son) (11) Lalit Singh (grand son) (12) Balbahadur (grand son).

In paragraph 5 of the application, the landlord Narain Singh has state that he wants to establish his own business as well as the business of his grand sons. Further in paragraph 8 of the application it has been specifically stated that the shop is required for the family members of the landlord. During the pendency of the application Narain Singh died on 28.12.1999 and as such on 12.1.2001 Mohan Singh has filed an

application under Rule 25 of U.P. Act XIII of 1972 paper no. 141-C supported by affidavit 142-C, stating therein that he is the sole legal representative of deceased Narain Singh. The application was replied by the petitioner stating therein that Mohan Singh is not legal representative and in fact he is nephew of Narain Singh. The objection is paper no. 144-C supported affidavit 145 -C.

Rejoinder affidavit was also filed by Sri Mohan Singh stating therein that after the death of Narain Singh he is the only legal representative as he is the adopted son of Narain Singh. According to pleadings of the parties adoption had taken place on 6.5.1955 and since then there is relationship of father and son between Narain Singh and Mohan Singh and further Narain Singh has treated Mohan Singh as his son and also gave him education at his residence. The Prescribed Authority vide his order dated 21.9.2001 has allowed the application and substituted Mohan Singh in place of deceased Narain Singh. The present writ petition has been filed challenging the order dated 21.9.2001 allowing the application under Rule 25 of U.P Act XIII of 1972.

Heard Sri B.C. Pandey, Advocate on behalf of the petitioner and Sri G.S. Bisht on behalf of respondent landlord at great length.

It has been vehemently argued by Sri B.C Pandey inter alia that the order dated 21.9.2001 allowing the application under Rule 25 is completely without jurisdiction; the application under section 21 (1)(a) has become infructuous after the death of Narain Singh in view of clause (7) of Section 21 of the Act; the cause of action, therefore, has already perished after the death of Narain Singh; Mohan Singh is not the legal heir of Narain Singh so as to get himself substituted under the provisions of family member as defined under the Act.

According to Sri B.C. Pandey Section 21 (7) provides that the heirs have to establish their own requirements in order to succeed under section 21 (1)(a) of U.P Act XIII of 1972. It may be pointed out that sub section (7) of Section 21 was introduced by inserting U.P. Act no.28 of 1997 with effect from 5.7.1997. The same is quoted below:

"(7) Where during the pendency of an application under clause (a) of sub section (1), the landlord died, his legal representative shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased."

As will appear from sub section (7) that original application under section 21 (1)(a) cannot be defeated on account of the death of original landlord. Sub section 7 of section 21 only provides additional need if any, of the legal representatives the word which has been emphasised under sub section (7) gives a clear meaning regarding additional requirement of legal representatives.

The word 'further' has a great significance and as such any material with regard to bona fide requirement in the original application under section 21 (1) (a) cannot be ignored on account of death of the original landlord. The meaning of 'further' as is given in Concise Oxford English Dictionary, Xth Addition, is that; *in or to a more advanced, successful, or desirable stage.....in addition also.*

Sri B.C. Pandey has referred the decision in *Birendra Nath vs. 6th A.D.J. Moradabad and other, 1981 ARC 191* where Hon'ble Mr. Justice S.D. Agrawal has relied upon the judgment of Hon'ble Supreme Court in *Phool Rani vs. Naubat Rai AIR 1973 S.C. 2110* and has held that if the application for release is made on personal requirement of landlord and if such a landlord dies, the personal cause of action itself perished with him. In the aforesaid judgment there is no reference of the provision of sub section (7) of section 21 an as such aforesaid view cannot be relied upon. The learned counsel for the petitioner has further relied upon *M/S N Nandi Prasad vs. Ramesh Chandra Gupta and others 1997 A.R.C II 654* where Hon'ble Mr. Justice Sudhir Narain has distinguished the aforesaid judgment of Birendra Nath's case (Supra). Similar controversy arose in *Raghunath G. Panhale vs. Chaganlal Sunderji and Co. (1999)8 SCC page 1.* The case relates to the bonafide requirement of landlord. The reference was also made by the Hon'ble Supreme Court regarding Phool Rani's case supra and the apex court has come to the conclusion that the judgment in the phool Rani's case

has been over-ruled in *Shatilal Thakor Dass and others vs. Chimanlal Maganlal Telwala (1976) 4 SCC 417.* The observations of the Apex Court in Raghunath G. Panhale's case are as under: -

"Learned counsel for the respondent, however, raised another point regarding abatement and relied upon Phool Rani vs. Nubat Rai Ahluwalia's to contend that while the matter was in the trial court, the original plaintiff died, that the cause of action based on his bona fide requirement ceased to exist and the suit could not have been continued by his heirs. This was because the original plaintiff's requirement would not be the same as that of his heirs. It is true, the above judgment does support the above contention. On the main point, the above decision was overruled in Shantilal Thakordas vs. Chimanlal Manganlal Telwala where it was held that if the original plaintiff pleaded that it was his own need and that of the family members, the cause of action would survive on his death to his heirs. In Shantilal case it was pointed out that if the landlord claimed possession on the ground of bona fide requirement for himself and his family members, his family members could continue the same eviction case, after the landlord's death, without amendment since the cause of action would survive to them."

As will appear from the observations of Hon'ble Supreme Court that the landlord in his initial application has already stated in paragraph 4 that he needs the premises in question for his family members. Similar controversy arose in *Kamleshwar Prasad vs. Pradumanju 1997 Vol I ARC 627* where apex court has observed that even the landlord died during the pendency of the petition bona fide need cannot be said to have been lapsed. Need, therefore, was set up with regard to the family members. According to the landlord Mohan Singh having been adopted and he having been shown as family member, need having been shown regarding grand son, therefore, in my opinion there is no impediment for the landlord to prosecute the original application under section 21 (1)(a) of U.P. Act No.13 of 1972 by the legal representative of Sri Narain Singh after filing application

under Rule 25 of U.P. Act XIII of 1972 I am, therefore, of the opinion that the application under Rule 25 has been rightly allowed.

Hon'ble Supreme Court in the case *Shiv Shakti Coop. Housing Society, Nagpur vs. M/S Swaraj Developers & others, JT 2003 (4) SC 255* has held as under:

"Laws ought to be and usually are, framed with a view to such cases as are of frequent rather than such as are of rare or accidental occurrence; or in the language of the civil law, jus constitui oportet in his quoe ut plurimum accident, non quoe ex inopinato; for, neque leges neque senatusconsulta ita scribi possunt ut omnes casus qui qundoque inciderint comprehendantur, sed sufficit ea quoe plerumque accident constineri; laws cannot be so worded as to include every case which may arise, but it is sufficient if they apply to those things which most frequently happen."

So far as the requirement of the substituted heir is concerned the counsel for the petitioner has stated that the said question shall be decided in the case itself before the Prescribed Authority. It will be open for the Prescribed Authority to adjudicate the question with regard to *bona fide* requirement of landlord/ his legal representative and the parties will be given sufficient opportunity to lead evidence with regard to the *bona fide* need of the landlord or his substituted heir.

So far as the question with regard to the proceedings under section 21 (1) (a) is concerned I am of the view that the judgment of Hon'ble Supreme Court reported in 1999 Vol. 8 S.C.C. where the original landlord pleaded that it was his own need and that of the family members, the cause of action would survive on his death to his heir. Therefore, there is no substance in the writ petition and the writ petition, deserves to be dismissed.

The writ petition is accordingly dismissed. There will be no order as to the costs.

(Rajesh Tandon, J.)

15.7.2003
*Dhyani